

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants, LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On March 30, 2006, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via overnight delivery, (ii) upon the parties listed on Exhibit B hereto via electronic notification, (iii) upon the parties listed on Exhibit C hereto via facsimile, and (iv) upon the parties listed on Exhibit D hereto via postage pre-paid U.S. mail:

- 1) Debtors' Objection to Motion by Offshore International, Inc. and Maquilas Teta Kawi, S.A. DE C.V. for Relief from Automatic Stay to Permit Setoff of Claims (Docket No. 3025) [a copy of which is attached hereto as Exhibit E]

Dated: April 3, 2006

/s/ Evan Gershbein
Evan Gershbein

Subscribed and sworn to (or affirmed) before me on this 3rd day of April, 2006, by Evan Gershbein, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature : /s/ Amy Lee Huh

Commission Expires: 3/15/09

EXHIBIT A

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Internal Revenue Service	Attn: Insolvency Department	477 Michigan Ave	Mail Stop 15	Detroit	MI	48226	313-628-3648	313-628-3602		Michigan IRS
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EXHIBIT B

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Capital Research and Management Company	Michelle Robson	11100 Santa Monica Blvd	15th Floor	Los Angeles	CA	90025	310-996-6140	310-996-6091	mlfr@capgroup.com	Creditor Committee Member
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Delphi Corporation	Sean Corcoran, Karen Craft	5725 Delphi Drive		Troy	MI	48098	248-813-2000	248-813-2670	karen.j.craft@delphi.com	Debtors
Electronic Data Systems Corp.	Michael Nefkens	5505 Corporate Drive MSIA		Troy	MI	48098	248-696-1729	248-696-1739	mike.nefkens@eds.com	Creditor Committee Member
Freescale Semiconductor, Inc.	Richard Lee Chambers, III	6501 William Cannon Drive West	MD: OE16	Austin	TX	78735	512-895-6357	512-895-3090	trey.chambers@freescale.com	Creditor Committee Member
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General Electric Company	Valerie Venable	9930 Kinsey Avenue		Huntersville	NC	28078	704-992-5075	866-585-2386	valerie.venable@ge.com	Creditor Committee Member
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: 4/7/06
AT: 10:00 a.m.

-----X	:	
In re:	:	
	:	Chapter 11
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 [RDD]
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	

**DEBTORS' OBJECTION TO MOTION
BY OFFSHORE INTERNATIONAL, INC.
AND MAQUILAS TETA KAWI, S.A. DE C.V. FOR RELIEF
FROM AUTOMATIC STAY TO PERMIT SETOFF OF CLAIMS**

**TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:**

Delphi Corporation ("Delphi") and Delphi Automotive Systems, L.L.C. ("Delphi Automotive"), debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by their undersigned counsel, as and for their objection to the motion dated March 14, 2006 (the "Motion") of Offshore International, Inc. ("Offshore") and Maquilas Teta Kawi, S.A. de C.V. ("Maquilas," and together with Offshore, the "Movants") for an Order for relief from the automatic stay to permit a setoff of claims, respectfully state:

PRELIMINARY STATEMENT

1. Delphi Automotive and Offshore are parties to a contract (the "Shelter Agreement") pursuant to which Offshore provides certain services to Delphi Automotive to facilitate its Mexican manufacturing operations.

2. Maquilas may have a separate contractual arrangement with Offshore, but is not a party to any contract with Delphi Automotive.

3. Nevertheless, Offshore and Maquilas seek relief from the automatic stay to set off Delphi Automotive's pre-petition obligations to *Offshore* under the Shelter Agreement against post-petition value added tax refunds (the "VAT Refunds") that are owed to Delphi Automotive and which are held by *Maquilas*.

4. Consequently, Offshore seeks relief to effect a "triangular setoff." Triangular setoffs, such as the one sought by Offshore, are not permissible under section Title 11, U.S.C. (the "Bankruptcy Code"), section 553 because they lack the requisite mutuality. "[I]n certain 'triangular' setoff cases, 'a subsidiary or other affiliate of the creditor owes money to the bankrupt and the two affiliates ask that they be treated as a single entity. This is rebuffed by pointing out that, save in exceptional circumstances, corporate and commercial law treat affiliated corporations as separate enterprises.'" *Apex Oil Co. v. DiMauro*, 744 F. Supp. 53, 57-58 (S.D.N.Y. 1990) (quoting *In re Elcona Homes Corp.*, 863 F.2d 483, 486-87 (7th Cir. 1988)).

5. Offshore and Maquilas also fail to satisfy the mutuality requirement of section 553 in other respects. Mutuality is lacking because the VAT Refunds were not received until after the commencement of these cases and the claims asserted by Offshore are asserted to have arisen prepetition. As a result, the Motion also seeks authority to setoff pre- and postpetition items. This is not permissible.

6. Moreover, although Maquilas is in possession of the VAT Refunds which belong to Delphi Automotive, Maquilas is a mere bailee without color of lien or at best a trustee of the refunds and, consequently, Maquilas does not have a debt which it can use to effectuate a setoff. Absent a debt and right of setoff, no cause for stay relief exists.

7. Based upon the foregoing, and the authorities set forth below, the Motion fails and should be denied.

STATEMENT OF FACTS

The Chapter 11 Cases

8. On October 8, 2005 (the "Initial Filing Date"), Delphi and certain of its subsidiaries, including Delphi Automotive (the "Initial Filers") each filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code. On October 14, 2005, three additional U.S. subsidiaries of Delphi (together with the Initial Filers, collectively, the "Debtors") filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code.

9. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. This Court entered Orders directing the joint administration of the Debtors' chapter 11 cases (Docket Nos. 28 and 404).

10. On October 17, 2005, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors in these cases, which is represented by Latham & Watkins. No trustee or examiner has been appointed.

The Debtors' Pre-Petition Transactions with the Movants

11. On December 9, 2002, Offshore and Delphi Automotive entered into the Shelter Plan Service Agreement (as renewed by letter agreements dated November 23, 2004 and August 4, 2005). A copy of the Shelter Agreement is attached to Affirmation of Hank Parisi, dated March 30, 2006, which annexed hereto as Exhibit A ("Parisi Affirmation") ¶ 6.

12. Pursuant to the Shelter Agreement, Offshore provides certain services to Delphi Automotive to facilitate Delphi Automotive's Mexican manufacturing operations. *See* Parisi Affirmation ¶ 3.

13. Maquilas is not a party to the Shelter Agreement. Indeed, the first five lines of the Shelter Agreement clearly provide:

This AGREEMENT entered into by and between Delphi Automotive Systems LLC, a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as CLIENT, and OFFSHORE INTERNATIONAL, INC., a corporation organized and existing under the laws of the State of Arizona, hereinafter referred to as OFFSHORE.

See Shelter Agreement, Parisi Affirmation, Exhibit 1, at 1.¹

14. Offshore appears to have a contractual relationship with Maquilas, separate and apart from Offshore's contractual relationship with Delphi Automotive. *See* Shelter Agreement, Parisi Affirmation, Exhibit 1, at 1 ("OFFSHORE has an existing contractual relationship with Maquilas Teta Kawi S.A. de C.V. ('Maquilas'), a Mexican corporation, for the furnishing of manufacturing space, labor and services in

¹ *See also id.* at 19: "The terms and provisions contained herein constitute the entire Agreement between the parties and supersede all previous communications and understandings, either oral or written, between the parties hereto with respect to the subject matter hereof. No agreements or understandings varying or extending the terms of this Agreement will be binding upon either party hereto unless in writing signed by a duly authorized officer or representative thereof of each party."

Guaymas/Empalme, Sonora, Mexico...."). Delphi Automotive is not a party to any contract with Maquilas. See Parisi Affirmation ¶ 9.

15. The Motion attempts to obscure the undeniable facts that (1) Offshore and Maquilas are separate entities and (2) Maquilas is not a party to the Shelter Agreement. The Motion does this, for example, by creating the defined term "Offshore Group" to refer to both Offshore and Maquilas, then stating that "the Offshore Group and Delphi Automotive Systems, L.L.C. entered into that certain 'Shelter Plan Service Agreement'. . . ." See Motion, at 1-2.

16. The Motion also tries to obscure that Maquilas is not a party to the Shelter Agreement by framing the basis for a setoff as:

Delphi Automotive owes the Offshore Group \$234,775.90 for pre-petition client purchases, customs broker fees and labor/shelter fees. The Offshore Group, on the other hand, owes Delphi Automotive \$252,448.87 for a pre-petition invoice overpayment and refunds for pre-petition value added taxes paid for June, July, August and September 2005, but refunded since the petition date.²

Motion, at 3. This is improper and fails to conceal the fatal impediments to the relief sought by the Motion.

17. Maquilas obtained the VAT Refunds after the Initial Filing Date and possessed them as of the filing of the Motion. Subsequent to an initial conference with counsel for Movants concerning the Motion, counsel confirmed to the Debtors: "To answer one of your questions, the 'pesos stay pesos' – i.e., the tax refunds are held by Maquilas."

² In an informal document production by Offshore to Delphi Automotive subsequent to the filing of the Motion, Offshore acknowledges a credit of \$25,443.57 owing from Offshore to Delphi Automotive, which reduces the debts purportedly owed by Delphi Automotive to Offshore from \$234,775.90 to \$209,332.33. Also, subsequent to the Initial Filing Date, the Debtors paid \$371,773.34 to Offshore pursuant to the Human Capital Obligations Order of the Court dated October 13, 2005.

Because Movants' request for authority to setoff fails as a matter of law, the Debtors expressly reserve their rights to determine the allowability of the claims listed in the Declaration annexed to the
(footnote continued on the following page)

18. All of the VAT Refunds were received by Maquilas from the Mexican government post-petition, except for the one value added tax refund which was pending, and had not been received, as of the time of the filing of the Motion.

ARGUMENT

A. Movants Have Failed to Show Cause to Modify the Automatic Stay Pursuant to Section 362(d)(1)

19. The Second Circuit has described the automatic stay as a “crucial provision of bankruptcy law” intended to “prevent disparate actions against debtors . . . [and] ensur[e] that no creditor receives more than an equitable share of the bankrupt’s estate.” *Lincoln Savings Bank, FSB v. Suffolk County Treasurer (In re Parr Meadows Racing Assoc., Inc.)*, 880 F.2d 1540, 1545 (2d Cir. 1989) (internal citations omitted).

20. Pursuant to Bankruptcy Code section 362(d)(1), the Court may grant relief from the automatic stay “for cause.” The Bankruptcy Code does not define the term “cause” and the determination of whether sufficient cause exists to modify the stay is determined on a case by case analysis. *See In re Balco Equities Ltd., Inc.*, 312 B.R. 734, 748-49 (Bankr. S.D.N.Y. 2004).

21. Movants erroneously argue that they have established a right to setoff and a showing of “cause” for relief from the automatic stay. *See* Motion, at 6. As demonstrated herein, Movants have failed to establish the mutuality of obligations that is required by Bankruptcy Code section 553. Therefore, Movants’ request for relief from the automatic stay fails as a matter of law.

Motion, and to determine whether any portion of those claims were satisfied by the Debtors’ payment to Offshore pursuant to the Human Capital Obligations Order or are not owing for other reasons.

**Movants Are Not Entitled To Effectuate A “Triangular Setoff”
Of Delphi Automotive’s Obligations To Offshore Under The Shelter Agreement
Against The VAT Refunds Which Are Owed To Delphi Automotive By Maquilas**

22. Movants may not set off Delphi Automotive’s obligations to Offshore against VAT Refunds that Maquilas must deliver to Delphi Automotive. “Section 553(a) allows a creditor to offset a mutual debt owed **by the creditor** to the debtor against a claim **of the creditor** against the debtor, so long as these mutual debts arose before the commencement of the case, and so long as the setoff is valid under state law.” *Togut v. Chemical Bank (Matter of Hecht)*, 41 B.R. 701, 703 (Bankr. S.D.N.Y. 1984) (emphasis added); *see also* 11 U.S.C. § 553(a). “A setoff is only applicable where the debtor and the creditor ‘owe’ one another.” *In re Brendern Enterprises, Inc.*, 12 B.R. 458, 460 (Bankr. E.D. Pa. 1981).

23. Movants bear the burden of establishing a right of setoff and must establish that (1) the debtor owes a debt to a creditor, which arose pre-petition; (2) the debtor has a claim against a creditor, which arose pre-petition; and (3) the debt and claim at issue are mutual. *See, e.g., In re The Bennett Funding Group, Inc.*, 212 B.R. 206, 212 (2d Cir. BAP 1997), *aff’d*, 146 F.3d 136 (2d Cir. 1998). Generally, mutual debts are debts “due to and from the same person in the same capacity.” *Id.* (quoting *In re Sentinel Prods. Corp., P.I., Inc.*, 192 B.R. 41, 45 (N.D.N.Y. 1996) (quoting *Modern Settings Inc. v. Prudential-Bache Sec., Inc.*, 936 F.2d 640, 648 (2d Cir. 1991))).

24. Mutuality is “strictly construed” against the party seeking a setoff. *In re The Bennett Funding Group, Inc.*, 212 B.R. at 212; *In re Sentinel*, 192 B.R. at 45; *In re Westchester Structures, Inc.*, 181 B.R. 730, 739 (Bankr. S.D.N.Y. 1995); *In re Fasano/Harriss Pie Co.*, 43 B.R. 864, 870 (Bankr. W.D. Mich. 1984) (citing *In re Virginia Block Co.*, 16 B.R. 560, 562 (Bankr. W.D. Va. 1981)).

25. Here, Movants cannot establish the fundamental mutuality requirement of section 553 because although Delphi Automotive may owe a debt to Offshore, Maquilas is not a creditor of Delphi Automotive. In other words, Movants' triangular setoff request fails to satisfy the requirement that the debtor owe a debt to a creditor against whom the debtor has a claim. *See* 5 Collier on Bankruptcy ¶ 553.03[3][i] (15th ed. rev. 2001) (explaining that triangular setoffs are not permitted by Bankruptcy Code section 553); *In re Mastroeni*, 57 B.R. 191, 192 (Bankr. S.D.N.Y. 1986) (setoff under section 553 "incorporates the concept that there first must exist a mutuality of obligations between the parties. The requisite mutuality of debts or credits means that the debts must be due and owing to and from the same persons. . . .").

26. Although Movants describe Maquilas as an "affiliate" of Offshore, Motion, at 2, this affiliation with Offshore does not satisfy the mutuality requirement. "[I]t is well established that 'one subsidiary may not setoff a debt owed to a bankrupt against a debt owing from the bankrupt to another subsidiary . . . The same rule applies with a parent corporation and a wholly owned subsidiary.'" *In re Fassano/Harriss Pie Co.*, 43 B.R. at 870 (quoting *Depositors Trust Co. v. Frati Enterprises*, 590 F.2d 377, 379 (1st Cir. 1979) and citing *Inland Steel Co. v. Berger Steel Co., Inc.*, 327 F.2d 401, 403-04 (7th Cir. 1964)).

27. Maquilas has no right to retain the VAT Refunds and it must turn over the VAT Refunds to Delphi Automotive.

Maquilas Does Not Have A Debt Which It Can Use To Effectuate A Setoff

28. Maquilas is not a creditor of Delphi Automotive and has no claim against which it may affect a setoff. Rather, Maquilas is in possession of property of the estate, which it must turn over. As the Court explained in *In re Brendern Enterprises*,

Inc., 12 B.R. 458, 460 (Bankr. E.D. Pa. 1981), “[a] set-off is only applicable in cases where the debtor and the creditor ‘owe’ one another. It is inapplicable to a situation where the debtor’s property is in possession of a creditor as bailee or trustee without color of lien. The title of property in such case will be in the bankruptcy estate and cannot form a basis for the debt which the creditor case use as a set-off on his claims against the debtor.”

29. In *Brendern Enterprises*, the debtor commenced a proceeding against a manufacturer for a turnover of its property and the manufacturer asserted, in response, that it was entitled to retain the equipment as a setoff against sums owed to it by the debtor. The Court determined that the creditor was not entitled to a setoff because it held the equipment in the capacity of bailee and held that “the property in question is not owing to the estate of the debtor, but rather, is owned by it. Thus, no mutuality of debt exists between the parties.” *Id.* at 460. To the extent that a party is a mere bailee of the property of the debtor, it may not effectuate a setoff. *See id.* at 460.

30. Maquilas, like the creditor in *Brendern*, is a bailee without color of lien. “An implied bailment arises when one comes into lawful possession of personal property of another, other than by mutual contract of bailment; such possessor may be treated as a bailee of property by operation of law and may reasonably be referred to as a constructive bailee.” *Tremaroli v. Delta Airlines*, 458 N.Y.S.2d 159, 160 (N.Y. Civ. Ct. 1983) (citing *Mack v. Davidson*, 55 A.D.2d 1027 (N.Y. App. Div. 1977)). *See also Nava v. Truly Nolen Exterminating of Houston, Inc.*, 683 P.2d 296, 299 (Ariz. Ct. App. 1984) (“Where personal property is delivered to one party by another in trust for a specific purpose, with the express or implied agreement that the property will be returned or accounted for when the purpose is accomplished, the transaction constitutes a bailment.”); 8A Am. Jur. 2d Bailments § 12 (2005) (“A constructive bailment arises

when one person has lawfully acquired possession of another's personal property, other than by virtue of a bailment contract, and holds it under such circumstances that the law imposes on the recipient of the property the obligation to keep it safely and redeliver it to the owner. A constructive bailment may occur even in the absence of a voluntary delivery and acceptance of the property which is usually necessary to create a bailment relationship."). Based upon these sound principles, Movants' setoff demand lacks the required "capacity" component of Bankruptcy Code section 553.

31. The obligation of an entity that files for a tax return on behalf of a debtor to deliver the refund to the debtor, and the concomitant inability of such entity to set off against the refund, are well established. In *In re Bob Richards Chrysler Plymouth Corp., Inc.*, 473 F.2d 262 (9th Cir. 1973), a consolidated tax return was filed on behalf of a parent corporation, its wholly owned debtor subsidiary, and another wholly owned corporation. A refund based upon the earnings history of the subsidiary was due and the trustee sought to obtain it for the benefit of the subsidiary. The parent company asserted that it could set off other unsecured obligations of the debtor subsidiary against the refund. The Court disagreed and held that, although the refund was made payable to the parent company and notwithstanding that the debtor had consented to the parent's filing of the consolidated return and acting as the debtor's representative in dealings with the government, the parent's liability to the subsidiary arose out of a fiduciary duty or was in the nature of a trust and that therefore, the requisite mutuality of obligations was lacking. *See id.* at 265. The Court held "[t]he trust res is not owing to the bankrupt's estate but rather is owned by it." *Id.*

32. Regardless of whether Maquilas is deemed to be a bailee without color of lien under *Brendern*, a trustee under *Bob Richards*, or some similar construct, it is apparent that Maquilas has mere possession of Delphi Automotive's VAT Refunds but

has no right or title to them. As the Second Circuit explained in the context of assessing a setoff under Section 68 of the Bankruptcy Act:

This section applies only to those situations where the bankrupt and creditor owe a debt to one another. It does not include the situation where the bankrupt's property is in the possession of the creditor as bailee or trustee, without color of lien. In such cases, title to the property would not be in the creditor, but would, instead, vest in the representative of the bankrupt estate, which, in this case, is the debtor in possession. Therefore, the property could not form the basis of a debt owing from the bankrupt which the creditor could use as an offset on his claim against the bankrupt.

Matter of Lykens Hosiery Mills, Inc., 141 F. Supp. 891, 893-94 (S.D.N.Y. 1956) (internal citations omitted).

33. For these reasons, Movants' request for authority to effect a triangulated setoff fails. There is no mutuality, and no cause for relief from the automatic stay.

**Movants May Not Set Off The VAT Refunds
Against Pre-Petition Debts Owed By Delphi Automotive To
Offshore Because The VAT Refunds Are Post-Petition Items**

34. As Movants correctly observe, "[t]he timing requirement [of section 553] is interwoven, in part, with the mutuality requirement; the idea being that claims arising after the commencement of the case lack the requisite mutuality for setoff against prepetition debts because the postpetition trustee or debtor-in-possession occupies a different capacity from the prepetition debtor." Motion, at 5 (quoting *Reich v. Davidson Lumber Sales, Inc., Employees Retirement Plan*, 154 B.R. 324, 335 (D. Utah 1993)). See also *In re Genuity, Inc.*, 323 B.R. 79, 82 (Bankr. S.D.N.Y. 2005) (citing *Shopmen's Local 455 v. Kevin Steel Products, Inc.*, 519 F.2d 698, 704 (2d Cir. 1975)) (a pre-petition debtor and a debtor in possession are separate and distinct entities, which act in different capacities before and after a bankruptcy filing.).

35. Here, the Debtors agree that the sums owed by Delphi Automotive (with one exception discussed below) are pre-petition debts. However, Delphi Automotive's claims for payment of the VAT Refunds did not arise until postpetition.

36. According to paragraph 12 of the Declaration of Jeffrey A. Prileson accompanying the Motion (the "Prileson Declaration"), "each of the value added tax refunds were [sic] received from the Mexican government after the Petition Date." The Date[s] received listed for receipt of three of the four refunds from the Mexican government are 11/2/2005, 11/16/2005 and 1/4/2006. Maquilas did not even apply for the fourth refund until post-petition, October 17, 2005, and it has not yet been received.

37. Under Article VI.E. of the Shelter Agreement, the obligation to deliver the VAT Refunds to Delphi Automotive is triggered by the Mexican government's return of the refunds. Consequently, Delphi Automotive could not demand return of the refunds from Offshore until after the VAT Refunds were received from the Mexican government – and that did not occur until after the Initial Filing Date. Accordingly, this postpetition obligation may not be set off by the pre-petition debts of Delphi Automotive to Offshore.

**Two Items Listed In Paragraphs 10 And 11 Of
The Prileson Declaration Are Not Pre-Petition Debts.**

38. The fourth purportedly pre-petition debt owing by Delphi Automotive to Offshore listed in paragraph 10 of the Prileson Declaration is a post-petition debt. This fourth debt is a \$6,780.31 debt allegedly owed by Delphi Automotive to Offshore pursuant to an invoice dated November 2, 2005 for "Customs Brokers [sic] incurred and paid by Maquilas on [sic] October." The date for this item is the post-petition date of 11/2/2005.

39. Moreover, as the only detail provided with respect to this debt is that it reflects “Customs Brokers incurred and paid by Maquilas on October,” it appears to relate back to a payment made by Maquilas after Delphi Automotive’s petition date and, therefore, also be a post-petition debt in that respect.

40. In an informal document production by Offshore to Delphi Automotive subsequent to the filing of the Motion, Offshore characterizes the November 2, 2005 invoice as “Customs Broker pre-petition.” *See* Exhibit B. This characterization is at odds with the Prileson Declaration description of “Customs Brokers [sic] incurred and paid by Maquilas on [sic] October.” Offshore, not Delphi Automotive, is in possession of information concerning this claim. For purposes of the Motion, Offshore should be bound by the description in the Prileson Declaration, which was submitted under penalty of perjury, rather than counsel’s unsworn characterization. This Court cannot, and should not, rely on those statements to find cause for relief from the automatic stay to permit this claim of setoff. *Cf. Ortiz v. Regan*, 749 F. Supp. 1254, 1263 (S.D.N.Y. 1990) (“assertions in a brief are not evidence of anything”); 10A Charles Alan Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice & Procedure: Civil* § 2723 (2006) (statements in briefs are “self-serving and are not probative evidence of the existence or nonexistence of any factual issues”).

41. Finally, the fifth purportedly pre-petition obligation owing from Offshore to Delphi Automotive listed in paragraph 11 of the Prileson Declaration constitutes a post-petition item. This item is a VAT Refund for which Maquilas did not apply to the Mexican government until October 17, 2005. Because the obligation to turn the refunds over to Delphi Automotive will not arise until after that refund is received, necessarily the obligation could not have been due before the tax return was

even filed by Maquilas, resulting in a post-petition obligation, which cannot be set off against the pre-petition claims asserted by Offshore.

42. Mutuality is lacking for those two items and they may not, in any circumstance, be subject to setoff.

CONCLUSION

43. Based on the foregoing, Movants have not and cannot establish cause for relief from the automatic stay to allow them to effectuate the setoff they seek and the Motion should be denied in its entirety.

Notice

44. Notice of this Objection has been provided in accordance with the Order under 11 U.S.C. §§ 102(1) and 105 and Fed. R. Bankr. P. 2002(m), 9006, 9007, and 9014 Establishing (i) Omnibus Hearing Dates, (ii) Certain Notice, Case Management, and Administrative Procedures, and (iii) Scheduling an Initial Case Conference in Accordance with Local Bankr. R. 1007-2(e), which was entered by this Court on October 14, 2005 (Docket No. 245). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum Of Law

45. Because the legal points and authorities upon which this Objection relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied.

WHEREFORE, the Debtors respectfully request that the Court enter an Order denying the Motion, together with such other and further relief as may be just and proper.

Dated: New York, New York
March 30, 2006

DELPHI CORPORATION, *et al.*
By their attorneys,
TOGUT, SEGAL & SEGAL LLP
By:

/s/ Neil Berger
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: 4/7/06
AT: 10:00 A.M.

-----X	:	
In re:	:	
	:	
DELPHI CORPORATION, <i>et al.</i> ,	:	Chapter 11
	:	Case No. 05-44481 [RDD]
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	

**AFFIRMATION OF HANK PARISI IN SUPPORT OF
DEBTORS' OBJECTION TO MOTION BY OFFSHORE
INTERNATIONAL, INC. AND MAQUILAS TETA KAWI, S.A. DE C.V.
FOR RELIEF FROM AUTOMATIC STAY TO PERMIT SETOFF OF CLAIMS**

HANK PARISI, affirms under penalty of perjury as follows:

1. I am a Comptroller for Delphi Automotive Systems, L.L.C. ("Delphi Automotive"), debtor and debtor-in-possession in the above-captioned chapter 11 cases. I am familiar with the Debtor's operations and its process of supplier payments. I have held this Comptroller position in Delphi Automotive since 2001 and have worked in the automotive industry in a financial position for over 25 years. I have a Bachelor of Science degree in Accounting from Youngstown

State University and a Masters in Business Administration from the University of Phoenix.

2. I have personal knowledge of the facts stated in this Affirmation. I have reviewed Debtors' Objection to Motion by Offshore International, Inc. and Maquilas Teta Kawi, S.A. de C.V. for Relief from Automatic Stay to Permit Setoff of Claims (the "Objection"). I can testify to the facts stated in this Affirmation and set forth in the Objection in court if necessary on behalf of the Debtors.

3. Delphi Corporation ("Delphi") is one of the world's largest suppliers of automotive components and electronics. Across the globe, Delphi operates over 40 domestic and 160 foreign entities in approximately 40 countries, employing more than 185,000 employees worldwide.

4. In my present position, I have responsibility, on behalf of Delphi, as the on-site U.S. Comptroller for Rio Bravo Electricos, S.A. de C.V. and Alambrados y Circuitos Electricos, S.A. de C.V. subsidiary companies of Delphi both located in Mexico. In addition, I am responsible for financial approval to pay the invoice charges for the Shelter Plan Service Agreement with Offshore International, Inc. which includes analyzing payments made by the Debtor against the Shelter Agreement.

5. I am one of the people who has access to and custody of Delphi Automotive's business records (including access to electronically stored data) concerning Delphi Automotive's dealings with Offshore International, Inc. ("Offshore"). These records are kept in the ordinary course of Delphi Automotive's regularly conducted business activity, which is Delphi Automotive's customary practice. I have reviewed Delphi Automotive's files on

the Movants,¹ which leads me to the summary set forth below. All documents attached are true and correct copies of the business records described above. All facts set forth herein are either (a) facts of which I have personal knowledge; or (b) an accurate summary of Delphi Automotive's business records as described above.

6. On December 9, 2002, Offshore and Delphi Automotive entered into the Shelter Plan Service Agreement, as renewed by letter agreements dated November 23, 2004 and August 4, 2005 (the "Shelter Agreement"). *See* Exhibit 1.

7. Pursuant to the Shelter Agreement, Offshore provides certain services to facilitate Delphi Automotive's Mexican operations.

8. Maquilas Teta Kawi, S.A. de C.V. ("Maquilas") is not a party to the Shelter Agreement.

9. Delphi Automotive is not a party to any contract with Maquilas.

10. I affirm under penalty of perjury according to the laws of the United States that the foregoing statements are true and correct.

Executed this 30th day of March, 2006 in Juarez, Mexico

/s/ Hank Parisi

HANK PARISI

¹ Capitalized terms which are not defined herein have the meaning set forth in the pre-fixed Objection to the Motion.



THE OFFSHORE GROUP

SHELTER PLAN SERVICE AGREEMENT

This AGREEMENT entered into by and between Delphi Automotive Systems LLC, a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as CLIENT, and OFFSHORE INTERNATIONAL, INC., a corporation organized and existing under the laws of the State of Arizona, hereinafter referred to as OFFSHORE.

RECITALS:

OFFSHORE has an existing established contractual relationship with Maquilas Teta Kawi S.A. de C.V. ("Maquilas"), a Mexican corporation, for the furnishing of manufacturing space, labor, and services in Guaymas/Empalme, Sonora, Mexico, and has sufficient receiving warehouse space in Tucson, Arizona, for consolidation of shipments.

OFFSHORE provided manufacturing space, labor and services to Exemplar Manufacturing Company and/or its affiliates ("EXEMPLAR") under terms similar to those set forth in this Agreement. CLIENT will receive some of such services as set forth below.

CLIENT is desirous of using OFFSHORE'S services in connection with the manufacture of CLIENT'S products, all on the terms and conditions set forth herein.

AGREEMENTS:

ARTICLE I - MANUFACTURING AND WAREHOUSE SPACE

- A. Within ten (10) days after the execution of this agreement, or as mutually agreed by the Parties, CLIENT will deliver to OFFSHORE a complete list of CLIENT'S requirements for the Mexican Facility and all other requirements for CLIENT'S manufacturing operation. OFFSHORE will undertake the necessary steps to provide facilities in Mexico and the United States that meet CLIENT'S requirements, and will provide all necessary coordination between the Mexican contractors and CLIENT.
- B. CLIENT will provide OFFSHORE a written description of all CLIENT'S equipment to be used in its manufacturing process in Mexico, together with an explanation of all electrical requirements, not later than 30 days prior to the



THE OFFSHORE GROUP

date scheduled for installation of electrical utilities at the Mexican Facility, as agreed to by the parties.

- C. OFFSHORE will make available to CLIENT, for its use in carrying out the manufacturing process in Mexico pursuant to this Agreement, a Mexican Facility that consists of Buildings 20, 21, 22, 4, and 7 (also known as Plants 4 and 8) of the OFFSHORE'S "Bella Vista" industrial park, located at Carretera Internacional Km. 1969 Guadalajara-Nogales Km.2 Empalme, Sonora, Mexico, consisting of approximately 208,612 square feet of manufacturing space for a period of 24 months commencing December 9, 2002. Notwithstanding EXEMPLAR's prior occupation of the Mexican Facility, the Facility will be provided in accordance with the Standard Building Specifications, attached hereto as Exhibit A and incorporated herein by this reference. Outside storage is permitted only with OFFSHORE'S written consent. Outside storage, if required, may be negotiated separately.
- D. CLIENT acknowledges that the Mexican Facility may contain equipment and/or improvements installed by Exemplar and its predecessors which is over and above the standard building specification provided by OFFSHORE. As such, any settlement of any claim for payment by Exemplar for such equipment or improvements utilized by CLIENT shall be borne by CLIENT.
- D. OFFSHORE will provide an office for the CLIENT'S on-site manager within the Manufacturing Facility.
- E. INTENTIONALLY LEFT BLANK.
- F. OFFSHORE will provide and maintain throughout the term of this Agreement, fire, casualty and such other insurance that is commercially reasonable and appropriate for the building that will be the site of CLIENT'S manufacturing operations in Mexico (the "Mexican Facility"). CLIENT will obtain and maintain any and all insurance that it deems necessary or appropriate for its material and equipment, whether located in the Mexican Facility, elsewhere in Mexico, while in transit, or in the United States, including OFFSHORE'S U.S. Facilities. At no time shall OFFSHORE be liable for any damages that occur during handling of CLIENT'S material and equipment. Upon CLIENT'S written request, OFFSHORE will acquire, through qualified brokers and at CLIENT'S expense, Mexican insurance covering CLIENT'S material and equipment.

ARTICLE II - SERVICES, REPAIR AND MAINTENANCE



THE OFFSHORE GROUP

- A. OFFSHORE will furnish one (1) private telephone line and two (2) telephone extensions in the Mexican Facility. CLIENT will pay all monthly telephone service charges. Recognizing that Exemplar has paid installation fees for previous telephone lines that will be used by CLIENT, CLIENT will only reimburse OFFSHORE for its actual cost for the installation of any new additional private telephone lines requested by CLIENT.
- B. OFFSHORE will keep the Mexican Facility in good repair at all times. It is expressly understood and agreed that all maintenance and repairs of the premises will be the responsibility of OFFSHORE, except for the cost of repairs for damage caused by CLIENT, which will be the responsibility of CLIENT. In addition, the cleaning of the production area within the Mexican Facility will be the responsibility of CLIENT.

ARTICLE III - LABOR

- A. OFFSHORE agrees to cause Maquilas to exert its best efforts to provide up to 1800 hourly and 120 salary employees to assemble and manufacture CLIENT'S Components into Finished Products. CLIENT will have direct supervisory control and management responsibility for all workers who are allocated to CLIENT'S operations at the Mexican Facility. Notwithstanding anything to the contrary contained herein, OFFSHORE and Maquilas will be deemed to be exerting their best efforts to provide additional workers hereunder if they are attempting to do so, in good faith. In making such efforts to provide additional workers, OFFSHORE and Maquilas may take into account the limitations of the available labor pool, the concurrent demand for additional employees by third parties, including, without limitation, other customers of OFFSHORE and/or Maquilas in the Empalme/Guaymas region, and other factors reasonably deemed relevant by OFFSHORE and Maquilas.
- B. CLIENT will have the right to select from the potential workers provided by OFFSHORE, those who meet CLIENT'S minimum requirements. The labor force will include production line workers, material handlers, group leaders, and inspectors. In addition to the foregoing labor force, which will be paid on an hourly basis, OFFSHORE will provide CLIENT with a pool of workers from whom CLIENT can select such salaried personnel as CLIENT may deem necessary for the better implementation of this Agreement.

Once CLIENT has accepted the workers, hourly or salaried, furnished by OFFSHORE, CLIENT will have full authority and responsibility to train,



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supervise, retain, and dismiss these workers. CLIENT represents, warrants and agrees that CLIENT has sole responsibility and authority for assuring that the manufacturing process and the products manufactured meet CLIENT'S standards for product quality.

- C. Since the workload hereunder may not be at a continuous and steady rate, it may become necessary from time to time to vary the total work force utilized in CLIENT'S operations at the Mexican Facility. Accordingly, OFFSHORE agrees to use its best efforts to assist the CLIENT, when requested by CLIENT, in reducing the work force in order to minimize the severance and labor charges to CLIENT hereunder. Notwithstanding the foregoing, OFFSHORE agrees to move 62 of the salaried employees assigned to Delphi to other assignments within the Mexican Facility, with other OFFSHORE clients, or to other facilities, within 9 months of the effective date of this Agreement, and if OFFSHORE cannot assign such 62 employees as provided herein after the conclusion of such 9 months, OFFSHORE will terminate the employment of such persons and shall be solely responsible for the related severance costs.
- D. The labor rates paid by OFFSHORE to the Mexican workers are based on Mexican Labor Laws (an example of how labor rates are calculated is described in Exhibit "B" attached hereto) and include Social Security, taxes, and all other benefits prescribed by Mexican Law. It is agreed that any increase in such wage caused by an act of the Government of Mexico, or resulting from a collective bargaining agreement between Maquilas Teta Kawi S.A. de C.V. and the Union, or by direction of the CLIENT, will be paid by CLIENT to OFFSHORE.
- E. OFFSHORE warrants that in providing CLIENT with personnel for the performance of this Agreement, it will in all respects conform to the laws, rules, regulations, and orders of appropriate Mexican governmental authorities.
- F. The Parties acknowledge that OFFSHORE and/or the Maquilas employ personnel for operations other than CLIENT's within the same industrial park that encompasses the Mexican Facility. OFFSHORE agrees to hold CLIENT harmless and to indemnify and defend CLIENT against any obligation as a "Secondary Employer" ("patrón solidario") as may be imposed on CLIENT under Article 15 of the Mexican Federal Labor Law, as amended from time to time, related to the employment of any personnel not employed by CLIENT



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ARTICLE IV - SHIPPING, CUSTOMS AND PERMITS

- A. **United States Customs and Duties.** CLIENT will retain title to all of its materials, products, machinery, and equipment used in connection with its operations hereunder. Therefore, for U.S. Customs purposes, OFFSHORE will not be the "importer of record" and will not be responsible for meeting the corresponding compliance obligations, including, but not limited to: classification of goods, valuation, record keeping, NAFTA determination, country of origin determination, duty calculation, cost submission, and reconciliation reporting; and U.S. Customs broker's charges, government fees, fines, penalties, and all other charges or exactions involved in the U.S. import process. CLIENT will also be responsible for supplying to OFFSHORE, on a timely basis, all information necessary for the preparation of commercial invoices and any other documents prepared by OFFSHORE for the CLIENT in the import process.
- B. CLIENT will manage the solicitation of documentation and information from suppliers of materials incorporated into finished products produced at Maquilas in order to document the NAFTA status of such finished goods. Furthermore, CLIENT shall assist Maquilas in the determination of the NAFTA eligibility of such finished goods and CLIENT will provide OFFSHORE with written supporting documents, including a prepared NAFTA certificate of origin, to be signed by Maquilas as the Producer/Exporter of such goods. Maquilas shall retain on-site records in accordance with Mexican laws relating to NAFTA. Client shall provide OFFSHORE or its designees, on a timely basis, information required for the preparation of pro-forma or commercial invoices and any other customs-related documents prepared by OFFSHORE or its designees at the request of CLIENT in the U.S. import process.

CLIENT expects OFFSHORE, and Maquilas to apply for Mexico's PROSEC program, and to take advantage of available opportunities under the NAFTA agreement to reduce or eliminate duties paid in Mexico with regard to the operations contracted by CLIENT. CLIENT will provide OFFSHORE and Maquilas with data required for the PROSEC application, as well as documentation and certifications relating to the NAFTA status of goods to be imported into Mexico. OFFSHORE will ensure that Maquilas maintains its maquiladora program, its PROSEC approval, its Mexican customs filings and associated permits and reports in compliance with applicable Mexican law, and that Maquilas further require any Mexican customs broker they employ to comply with the same requirements.



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If CLIENT so elects, OFFSHORE will, through Maquilas and their designated Mexican customs broker, coordinate with Mexican authorities the customs clearance of the importation of CLIENT'S materials, parts and components and any other required inputs (the "Inputs"), as well as machinery and equipment, and the export from Mexico of the finished products, any machinery and equipment, and other items. To the extent that OFFSHORE or its designees provide such services, CLIENT shall supply OFFSHORE, on a timely basis, with all pertinent information and documentation, including, without limitation, complete descriptions, make, model and serial numbers, weights, costs, country of origin and certificates of origin, in order for OFFSHORE to process the shipments and obtain the necessary permits on behalf of CLIENT. CLIENT, at its option and with agreement of Offshore, may nominate and contract with a Mexican customs broker to conduct Mexican import and export operations on behalf of Maquilas, at CLIENT's expense. If CLIENT exercises this option, it will ensure that the Mexican Broker maintains a close working relationship with Maquilas, and Offshore agrees to ensure that Maquilas does the same with such Mexican Broker.

- C. In view of OFFSHORE'S reliance on data supplied by CLIENT, CLIENT agrees to indemnify and hold OFFSHORE harmless, including reasonable attorneys' fees, for any action, claim, loss, assessment or penalty imposed by the U.S. Customs Service against OFFSHORE in connection with the entry of client's products into the U.S.
- D. In view of CLIENT'S reliance on data supplied and customs operations provided by OFFSHORE or its designees, OFFSHORE agrees to indemnify and hold CLIENT harmless, including reasonable attorneys' fees, for any action, claim, loss, assessment or penalty imposed by the Mexican government against OFFSHORE, OFFSHORE's designees, or CLIENT in connection with OFFSHORE or its designee's Mexican import and export and NAFTA-related services relating to CLIENT's production in Mexico.
- E. **Mexican Customs and Duties.** CLIENT will reimburse, in accordance with Article VI, subparagraph A., all duly documented freight charges, customs and brokerage fees, tariffs, duties, payments to the government of Mexico, and other costs and expenses incurred by OFFSHORE or its designees in the performance of its duties under this Article IV for the account of CLIENT. CLIENT and OFFSHORE and its designees shall cooperate to identify and shall use their best efforts to recover any refunds of duties paid by CLIENT to which CLIENT, OFFSHORE or its designees shall be legally entitled to claim.



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- F. **Administrative Services.** OFFSHORE will provide necessary administrative services to effect shipment of material and equipment to and from Guaymas/Empalme, Sonora, Mexico.
- G. **Reimbursable Expenses.** All freight charges, customs and brokerage fees, tariffs, duties, payments to the government of Mexico, and other costs and expenses incurred by OFFSHORE in the performance of its duties under this Article IV, are incurred for the account of CLIENT. CLIENT will reimburse OFFSHORE for all amounts so paid for its account in accordance with Article VI, subparagraph A.
- H. **Pending Liabilities.** The parties understand and acknowledge that several contingencies exist prior to the Effective Date of this Agreement, relating to Exemplar's operation with OFFSHORE. To resolve such contingencies, Delphi agrees to pay, at or within 5 days of the execution of this Agreement, \$35,000 USD as a full and final settlement of the following: all payments due by Exemplar to Offshore due to unpaid services or products, all amounts due by Exemplar to Offshore for open customs pedimentos, all other claims for payment from Exemplar to Offshore, of whatever nature, known or unknown at this time, except as the parties otherwise agree in this Agreement, and any payments as may have to be made in connection with labor cases currently being litigated relating to employees assigned to Exemplar, and Offshore agrees to hold harmless, defend, and indemnify Delphi against any costs or liabilities relating to such litigation.
- I. **Pending Liabilities: Customs Pedimentos:** The parties acknowledge that the resolution of potential customs charges resulting from the reconciliation of pedimentos relating to Exemplar and its predecessor companies may have a serious financial impact on OFFSHORE. As such, CLIENT and OFFSHORE agree to use their best efforts to cooperate to mitigate the financial impact and thereby reduce any customs charges resulting from such reconciliation of the Exemplar pedimentos with actual inventory in Mexico. CLIENT agrees to assist OFFSHORE with CLIENT'S personnel and expertise, as mutually agreed with OFFSHORE, and at CLIENT'S expense for such personnel and their incidental expenses. CLIENT and OFFSHORE agree that CLIENT'S liability for customs charges is limited to, and included in, the amount stated in paragraph H immediately preceding this paragraph.

ARTICLE V - FEES AND COSTS

- A. CLIENT agrees to pay the following fees during the term of this Agreement:



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- (i) **Facilities Fee.** A fee (the "Facilities Fee") of \$0.42 per sq/ft for each month of CLIENT'S use of Buildings 20, 21, and 22 (Plant 4) of the Mexican Facility and \$0.385 per sq/ft for each month of CLIENT's use of Buildings 4 and 7 (Plant 8) of the Mexican Facility, during the term of this Agreement. The Facilities Fee for the next month will be billed in the last weekly billing of the prior month. In addition, OFFSHORE shall include in this billing an amount equal to 15% of the Facilities Fee. This amount shall cover OFFSHORE'S obligation to Maquilas Teta Kawi to advance Mexico's value added tax (IVA) on the space. OFFSHORE shall credit CLIENT for the IVA paid on the Mexican facilities within 15 days of Maquilas Teta Kawi being able to utilize the IVA, or otherwise receiving a refund of the IVA from the Mexican government. Credit will be given to CLIENT at the peso/US dollar exchange rate that applies on the date the IVA is credited by Maquilas Teta Kawi.
- (ii) **Park Maintenance Fee ("PMF"):** of \$0.02 per sq./ft. per month for each month of CLIENT'S use of the Mexican Facility. The PMF covers the costs and expenses associated with the management, repair, maintenance and insuring of OFFSHORE'S Industrial Park (not the Mexican Facility).
- (iii) **Shelter Plan Fee.** CLIENT agrees to pay OFFSHORE a weekly fee for its goods and services hereunder (the "Shelter Plan Fee"), which will be calculated as follows:

By multiplying 1) the number of actual hours paid during the week by CLIENT in its manufacturing process, by 2) the applicable hourly rate set forth in the following schedule:

Offshore Shelter Plan Fee Schedule
per employee Hour *

Headcount	Shelter Fee per employee hour
1-25	\$2.73
26-50	\$2.63
51-100	\$2.37
101-200	\$1.75
201-300	\$1.34
301-400	\$1.13
401-500	\$0.93



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501-750	\$0.88
751-999	\$0.77
1000-1199	\$0.70
1200-1399	\$0.64
1400-1599	\$0.61
1600-1799	\$0.57
1800-1999	\$0.545
2000-2250	\$0.50
2251-2500	\$0.48
2501-2999	\$0.47

* CLIENT agrees that the rate to be used to determine the weekly Shelter Plan Fee will be the rate applicable to the highest number of workers employed in connection with the manufacture of CLIENT'S products during any single day of the week for which payment is being calculated. For example, if 201 employees are assigned to CLIENT any day of any given week, and 201 is the highest number of employees assigned to CLIENT for that week, the rate applicable to all 201 employees for that week will be \$1.34. In calculating the Shelter Plan Fee, salaried personnel shall be deemed to work 48 hours per week. The Shelter Plan Fee shall commence on the first day that the employees furnished by OFFSHORE begin to perform work for CLIENT.

B. Reimbursable Costs. CLIENT further agrees to reimburse OFFSHORE for the following costs and charges incurred by OFFSHORE in connection with this Agreement in accordance with the procedures described in Article VI hereof:

- (i) All payments made by OFFSHORE, for CLIENT'S account, in the performance of this Agreement. CLIENT understands and agrees that the payments made to, or for the benefit of, workers consist of wages, taxes, fringe benefits and other personnel costs, and that the amount of such payments depends on a variety of factors, such as applicable statutes and regulations, as well as pertinent collective bargaining agreements. The factors affecting the amounts of the payments are subject to amendment from time to time. An example of a Wage and Fringe Calculation displaying the typical components of the payment amount is set forth on Exhibit "B" attached hereto. The actual amount of the payments (the "Weekly Compensation Amount") will be computed weekly, and the corresponding amount to be reimbursed to OFFSHORE will be based on the U.S. dollar-Mexican peso exchange



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rate at which OFFSHORE purchased pesos from a major Mexican and/or U.S. financial institution for the applicable week.

CLIENT further agrees to reimburse OFFSHORE for any overtime hours authorized by CLIENT at the overtime premium paid by OFFSHORE for CLIENT'S account. Overtime payments will be calculated by the sum of (1) the wages and fringe benefits multiplied by two for double time (or multiplied by three for triple time), and (2) the applicable Shelter Plan Fee.

- (ii) All costs incurred by OFFSHORE in connection with services provided at CLIENT'S written request that are not otherwise referred to herein. CLIENT'S request for additional services must be made in writing on CLIENT'S "Purchase Requisition" form and must be signed by CLIENT'S representative.
- (iii) The cost of electric power consumed by CLIENT in the Mexican facility. OFFSHORE (at CLIENT'S cost) shall coordinate the installation of an electrical meter for the facility.
- (iv) The cost of water and sewer charges, if applicable, consumed by CLIENT. OFFSHORE (at CLIENT'S cost) shall coordinate the installation of a water meter for the facility.
- (v) The cost of bus transportation for CLIENT'S workers.
- (vi) The cost for CLIENTS' participation in the Employee Sports Complex (the Employee Sports Complex is operated by a non-profit entity created by OFFSHORE. CLIENTS' representatives are invited and shall have the right at any time during the term of this Agreement to join the Board of this entity, which directs its operations and budget.)
- (vii) All other payments made by OFFSHORE, on behalf of the CLIENT in the performance of this Agreement.

C. **Worker Termination Costs.** Except as otherwise provided in Article III (C), CLIENT will have the sole responsibility to pay any and all costs associated with the severance or termination of any and all workers (the "Severance Payments"), including production line workers, material handlers, group leaders and inspectors, supervisory workers, monthly salaried administrative, technical workers and confidential workers hired at the request of the



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CLIENT, but only to the extent that such severance benefits are calculated on the basis of employment assignment to CLIENT, Exemplar, and its predecessors: Exemplar/Thomas & Betts, Augat, Inc., and National Industries (the "Employment Period"). CLIENT will reimburse OFFSHORE for any and all costs that OFFSHORE incurs in connection with the severance or termination of any workers for the Employment Period. If more than fifty (50) workers are terminated in any one week, for any reason, CLIENT shall advance to OFFSHORE or Maquilas (prior to the date on which Severance Payments are payable to such terminated workers) the amount of the Severance Payments that are due to such terminated workers.

- D. **Adjustment for Economic Factors:** OFFSHORE will notify CLIENT of the Shelter Plan Fee, thirty days prior to the beginning of each contract year, beginning with year two.

The rate modification will be determined in accordance with the procedure set forth in Exhibit C, "Economic Factors Adjustment" herein, and is intended to preserve, in a general way, the financial expectations of the parties as they exist at the commencement of the Shelter Plan Agreement. The Economic Factors Adjustment recognizes changes in Mexican and U.S. price levels and the peso/US Dollar exchange rate.

- E. **Facilities Fee Adjustment:** The Facilities Fee shall be adjusted annually, at the same time as the Shelter Fee. The Facilities Fee will be adjusted in accordance with the procedure set forth herein and will equal the percentage increase (or decrease), if any, in the cost of living for the preceding year based upon the United States Consumer Price Index - All Items - U.S. City Average, All Urban Consumers (USCPI) issued by the Bureau of Labor Statistics of the United States Department of Labor (the base year and price for said Index is 1967 equals 100). In the event the Index ceases to be published, the most comparable substitute shall be used thereafter as selected by the mutual agreement of the parties.

ARTICLE VI - INVOICES AND PAYMENT

- A. OFFSHORE will submit invoices for amounts owed under this Agreement to CLIENT on a weekly basis, as set forth below, except for the monthly Facilities Fee, which shall be billed monthly in advance.
- B. Each invoice will contain the following information:



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- (i) The total number of basic, non-overtime hours worked during the relevant week;
 - (ii) The total overtime hours and the associated overtime premium cost; and
 - (iii) A summary of costs incurred by OFFSHORE for the CLIENT'S account pursuant hereto, including, but not limited to, a) freight for moving CLIENT'S materials, equipment, and finished products across the border; b) Mexican brokerage charges; and c) supplies.
- C. Each invoice will be accompanied by paid receipts or third party invoices for costs incurred by OFFSHORE in the U.S. for CLIENT'S account pursuant to this Agreement and for which OFFSHORE is seeking reimbursement. With respect to costs incurred by OFFSHORE in Mexico (other than freight and customs charges), the invoice will be accompanied by a document signed by CLIENT'S on-site representative, whose signature will conclusively signify the accuracy of (i) the number of basic and overtime hours worked during the relevant work week, (ii) the number of workers utilized during the relevant period, and (iii) the costs incurred in Mexico (other than freight and customs charges) for which reimbursement is sought in the invoice. The approval of such Mexican costs, as evidenced by the signature of CLIENT'S on-site representative, will constitute the binding agreement of CLIENT to reimburse OFFSHORE for the such approved Mexican costs.
- D. D. CLIENT hereby agrees to pay OFFSHORE the amount of each such invoice as follows: 1) Labor Charges: On Thursday of each week, OFFSHORE shall provide to CLIENT an estimate of the charges corresponding to the week in which labor charges are incurred. The estimate invoice shall be due and payable on the following Tuesday via electronic transfer to OFFSHORE's bank. Actual invoice for the prior week's labor charges and the associated Shelter Plan Fee will be issued every Wednesday, with any estimate payments reflected on such invoice as either true-up payments to be made by Delphi, or true-up credits to be counted against future Delphi payments. The balance due on such invoice is due 7 days from the invoice date (i.e. the following Tuesday). 2) Non-Labor Charges. All other (non-labor) invoice charges will be due and payable within 10 days after CLIENT'S receipt of such invoice. If any portion of the invoice is disputed by CLIENT, CLIENT agrees that it will pay the undisputed portion of the invoice as if there were no such dispute about the remainder of the invoiced amount. OFFSHORE acknowledges and understands that CLIENT cannot process



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payments without invoices, and therefore CLIENT will not be in breach for failure to pay any invoices not delivered.

- E. Payments made pursuant to this Agreement will be net of any and all taxes. In the event that payments made pursuant to this Agreement are subject to withholding taxes or other similar taxes, which CLIENT is required to pay for the account of OFFSHORE, CLIENT will promptly pay such taxes for the account of OFFSHORE. CLIENT will promptly forward a withholding receipt for any withholding taxes paid. Any value-added tax, sales tax or other similar taxes related to the fees and expenses incurred under this Agreement will be refunded to CLIENT within 15 days of Maquilas Teta Kawi/OFFSHORE being able to utilize the IVA or similar tax, or otherwise receiving a refund of the IVA, or similar tax, from the Mexican government.
- F. CLIENT understands and agrees that certain purchases requested by CLIENT may require deposits, progress payments (as in the case of construction projects), or payment on delivery (as in the case of a vehicle purchase). In such instances, OFFSHORE, will inform CLIENT in advance of the need for such special payments, and shall invoice the CLIENT for the amount due and will make the corresponding purchase, deposit, or progress payment when such invoice is paid in full by CLIENT.

ARTICLE VII - TERM AND TERMINATION

- A. The term of this Agreement is for a period of 24 months commencing on the Effective Date.
- B. This Agreement may be terminated by CLIENT at any time during the term of this Agreement or any renewal period thereafter, without penalty or any continuing obligation whatsoever to OFFSHORE for any material breach of this Agreement by OFFSHORE that remains uncured after 30 days after receiving written notice of such breach. The Agreement may also be terminated by CLIENT without breach by OFFSHORE anytime during the term of this Agreement or any renewal period thereafter, by giving OFFSHORE ninety (90) days written notice of its intention to terminate. At the time of giving such notice, CLIENT will pay OFFSHORE a termination fee equal to the immediately preceding 30-day billing for the Shelter Plan Fee and the Facilities Fee under Article V hereof. The parties agree that OFFSHORE will suffer damages as a result of CLIENT'S early termination of this Agreement, and that such damages will be difficult to accurately quantify. The termination fee is intended to approximate the damages to be suffered by



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OFFSHORE as a result of such termination and not as a penalty, and shall be OFFSHORE's total and exclusive remedy for such anticipated termination, except for the severance expenses mentioned in the following sentence, and OFFSHORE hereby waives any other right to a remedy, whether in contract, tort, or any other cause of action or claim. CLIENT acknowledges that termination of this agreement, whether during the first or subsequent years, will give rise to certain termination and severance expenses relating to the workers Offshore has employed at the request of the CLIENT. Such expenses are the sole responsibility of the CLIENT, to the extent and as stated in ARTICLE V, Section C of this agreement. These expenses are in addition to any termination fee owed by the CLIENT to Offshore as a result of the termination of this agreement. Offshore will attempt to minimize severance expenses by any means available including using its best efforts to place client's employees in other facilities with other Offshore client companies.

- C. If CLIENT terminates this Agreement, payment of Facilities Fee due hereunder shall continue, regardless of CLIENT'S notice of termination, until the end of the stated term of this Agreement, or upon occupancy of the Facility by a new client acceptable to OFFSHORE at OFFSHORE'S sole discretion, whichever is earlier. In such an event, OFFSHORE shall be under a duty to use best efforts to secure a new client for occupancy of the Facility, and will give good faith consideration to any potential shelter client as may be proposed by CLIENT.

ARTICLE VIII - OPTION TO RENEW

As long as there has not theretofore occurred an event of default hereunder, CLIENT may renew this Agreement for three separate, additional periods of one (1) year each. CLIENT may exercise its right to renew this Agreement for the next succeeding year by giving OFFSHORE written notice of its intention no fewer than one hundred twenty (120) days prior to the then scheduled expiration of the Agreement.

ARTICLE IX - PRODUCT LIABILITY

CLIENT hereby indemnifies, and agrees to protect, defend and hold OFFSHORE and Maquilas Teta Kawi S.A. de C.V harmless against all demands, obligations, claims, costs, expenses, judgments, awards and liabilities of any nature, claimed or asserted by any person, and against all losses in any way suffered, incurred, or paid or that may be suffered, incurred, or paid by OFFSHORE as a result of, or in



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any way arising out of, or consequential to the design, manufacture, use, delivery, consumption, or integration into other products of any of CLIENT'S products.

ARTICLE X - LAWS, RULES AND REGULATIONS

- A. OFFSHORE will exert its best efforts to cause its subcontractors to comply with all of the laws, rules, and regulations of governmental authorities of Mexico.
- B. OFFSHORE ensures that it has complied with the requirements of Section LXXIV/LXXX of the Transitory Provisions of the Income Tax Law in relation to CLIENT'S tax status or liability under the tax laws of Mexico. The CLIENT represents and warrants that it has investigated and is satisfied with its understanding of the tax effects of its operations under the Agreement and, in connection therewith, has not relied on any statement made by OFFSHORE other than stated above.
- C. If there is a change in Mexican tax laws or regulations that could cause an increase in OFFSHORE/Maquilas Teta Kawi S.A. de C.V.'s Mexican taxes in connection with any action or election by CLIENT to avoid Mexican taxes due to the presence in Mexico of CLIENT's machinery, equipment, inventory and employees, CLIENT agrees that it will not take any such action or make any such election without the written consent of OFFSHORE. Furthermore, to the extent that changes in Mexican tax laws or regulations cause Mexican taxes to be payable by OFFSHORE/Maquilas Teta Kawi S.A. de C.V. in connection with the presence in Mexico of CLIENT's machinery, equipment, inventory and employees under the Shelter Plan Agreement without any action or election by CLIENT, OFFSHORE and CLIENT agree, within thirty (30) days written notice from OFFSHORE, to utilize reasonable efforts to revise the structure for the Shelter Plan Agreement so as to mitigate such Mexican taxes. If such efforts do not result in an alternative structure which would mitigate such Mexican taxes then the parties agree to negotiate whether and to what extent the service fee should be adjusted to take into account the increased Mexican taxes payable by OFFSHORE/Maquilas Teta Kawi S.A. de C.V.
- D. Hazardous Waste: OFFSHORE represents and warrants that at delivery of the Facility to CLIENT, the Facility is in compliance with all environmental laws and regulations, and is not subject to any corrective action plan relating to the environmental remediation of the Facility. OFFSHORE will hold harmless, defend and indemnify CLIENT from and against any action relating to any non-compliance with environmental laws, regulations or judicial or



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Without in any way relieving it of any obligation or duty otherwise undertaken hereunder, OFFSHORE will have the right to enter into a subcontract with Maquilas Teta Kawi S.A. de C.V., a Mexican corporation, to provide services hereunder in Mexico.

ARTICLE XIV - CONFIDENTIAL INFORMATION

The parties acknowledge and agree that the performance of this Agreement by either of them, or of any subcontractor of either of them, will not entail the disclosure, whether voluntarily or involuntarily, by either party to the other of any trade secrets or any proprietary or confidential information. In the event that at any time during the term of this Agreement either party proposes to disclose to the other party, or to utilize in connection with its operations under this Agreement, any such trade secret or proprietary or confidential information, the disclosing party will promptly notify the other party prior to making such disclosure or utilization. The parties agree that, promptly after the receipt of such notice, they will negotiate an amendment hereto providing for safeguarding such trade secret or proprietary or confidential information.

ARTICLE XV - ARBITRATION

Any controversy arising between the parties or any person claiming under either of them relating to this Agreement or the performance or breach of any provisions hereof will be settled by arbitration in Pima County, Arizona, in accordance with the governing rules of the American Arbitration Association; provided, however, the parties will be entitled to pursue all the discovery that would be available to them under, and in accordance with the rules, applicable to actions in the Superior Court of Pima County, Arizona.

Each party will be entitled to, and promptly after receipt of notice of the filing of an arbitration claim, will appoint a person to act as arbitrator from a panel of qualified arbitrators of the American Arbitration Association. The two selected arbitrators will promptly appoint a third arbitrator.

The arbitration decree shall be final and non-appealable. Judgment thereon may be entered by any court of competent jurisdiction. The prevailing party in any such matter will be entitled to recover its costs and expenses, including attorneys' fees, from the non-prevailing party.

Nothing contained in this Article XV will limit the right of any party to exercise self help remedies or to obtain any provisional or ancillary remedies, including,



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but not limited to, injunctive relief or appointment of a receiver, from a court of competent jurisdiction.

ARTICLE XVI - TIMING; SECURITY

- A. Time is of the essence hereof of this Agreement.
- B. As collateral security for CLIENT'S faithful performance of its obligation hereunder, CLIENT hereby grants OFFSHORE a security interest in all property of CLIENT (the "Collateral") that is in the possession or control of OFFSHORE or Maquilas Teta Kawi S.A. de C.V., a Mexican corporation.

ARTICLE XVII - DEFAULTS AND REMEDIES

If any of the Parties fail to pay or perform their duties in a material manner under this Agreement, such material failure will be considered to be an Event of Default hereunder. Failure by either party to make a payment when due hereunder within seven (7) days after receiving written notice of such failure to pay, or to perform any other material obligation hereunder within seven (7) days after written notice of such failure to pay or perform from the non-defaulting party (the "Default Notice"), shall constitute an Event of Default hereunder; provided, however, if the failure to perform a material obligation (other than the payment of any amounts due hereunder) cannot reasonably be cured within the thirty (30) days after the Default notice, it shall not constitute an Event of Default if the defaulting party commences reasonable steps to correct such failure within such thirty (30) day period and diligently pursues such corrective action to its logical conclusions as soon as practicable. Upon the occurrence of an Event of Default, the non-defaulting party will be entitled to pursue all remedies available to it under this Agreement or under the common law of the State of Arizona, including but not limited to, the right of set-off. The Parties agree that the non-defaulting party may pursue such remedies through its agents.

No failure or delay on the part of the aggrieved party to exercise any such right, power or remedy and no notice or demand which may be given to or made with respect to any such remedies shall operate as a waiver thereof, or limit or impair the aggrieved party's right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights.

ARTICLE XVIII - RIGHT TO AUDIT



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Upon reasonable advance notice, CLIENT shall have the right to audit the books and records of OFFSHORE, and its designees providing services under this Agreement, and OFFSHORE will cooperate with CLIENT in such an audit and grant CLIENT access to such records as, in CLIENT's reasonable discretion, are necessary for CLIENT to perform such an audit. OFFSHORE will ensure that CLIENT's right to audit is preserved in its contracts with such designees.

ARTICLE XIX - ENTIRE AGREEMENT

The terms and provisions contained herein constitute the entire Agreement between the parties and supersede all previous communications and understandings, either oral or written, between the parties hereto with respect to the subject matter hereof. No agreements or understandings varying or extending the terms of this Agreement will be binding upon either party hereto unless in writing signed by a duly authorized officer or representative thereof of each party.

For purposes of this Agreement, the Effective Date shall be 12/09/02 (date).

OFFSHORE INTERNATIONAL, INC.
an Arizona corporation

By: [Signature]
Luis F. Seldner

Its: President
Date: Dec. 9th 2002

Company: Delphi Automotive Systems LLC.

By: [Signature]
James A. Spencer

Its: Vice President

(Client)

Stake File Agreement
09/22/02

 **THE OFFSHORE GROUP**

EXHIBIT A – STANDARD BUILDING SPECIFICATIONS
[to be provided by OFFSHORE]

 THE OFFSHORE GROUP

EXHIBIT B – MEXICAN LABOR RATES CALCULATION
[to be provided by OFFSHORE]



THE OFFSHORE GROUP

EXHIBIT C

ECONOMIC FACTORS ADJUSTMENT

The parties acknowledge and agree that economic changes in either Mexico or the United States may have an effect on the expectations of the parties at the outset of this Agreement. In an attempt to preserve those expectations, in a general way, the parties agree that the Shelter Plan Fee will be increased or decreased annually. Offshore agrees that thirty (30) days prior to the beginning of each contract year (such date is referred to herein as the "Calculation Date"), beginning with year two, it will calculate the Shelter Plan Fee for the next contract year and will notify Client of such adjusted Shelter Plan Fee.

Offshore will calculate the new Shelter Plan Fee in accordance with the following procedure:

I. CALCULATION OF ADJUSTMENT FOR MEXICAN ECONOMIC CHANGES

$$([A \text{ divided by } B] - 1) \times 100 = \text{the Percentage Adjustment to be made to Mexican Portion of the prior year's Shelter Plan Fee (i.e. 70\% of such prior year's Shelter Plan Fee)}$$

Where:

$$A = (1 + [\text{Percent of Change in Mexican CPI divided by } 100])$$

$$B = (1 + [\text{Percent of Change in Exchange Rate divided by } 100])$$

II. CALCULATION OF ADJUSTMENT FOR UNITED STATES ECONOMIC CHANGES

$$\text{Change in US CPI, as defined herein} \\ = \text{the Percentage Adjustment to be}$$



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made to US Portion of the prior year's Shelter Plan Fee (i.e. 30% of such prior year's Shelter Plan Fee).

III. FINAL CALCULATIONS

1. The Percentage Adjustment calculated under Clause I will be applied to 70% of such prior year's Shelter Plan Fee, and the result thereof is referred to as "X."
2. The Percentage Adjustment calculated under Clause II will be applied to 30% of such prior year's Shelter Plan Fee, and the result thereof is referred to as "Y."
3. The percentage equal to the sum of X and Y will be applied to the Shelter Plan Fee for the current contract year to determine the increase or decrease in the Shelter Plan Fee for the following contract year.

IV. DEFINITIONS

1. Percent of Change in Mexican CPI. The parties agree to measure the percentage increase (or decrease) in the cost of living in Mexico for the preceding twelve months by reference to the Mexican National Consumer Price Index (*Indice Nacional de Precios al Consumidor*) (the "Mexican Price Index"), which is published by the Banco de Mexico. The base year and price for the Mexican Price Index will be 1994 equals 100.

Offshore will measure the change in the Mexican Price Index, expressed as a percentage, over a twelve (12) month period ending on the date of the Mexican Price Index that is most recently published and available on the Calculation Date.



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2. Percent of Change in Exchange Rate The parties agree that the Percent of Change in Exchange Rate means the change in the Exchange Rate, as hereinafter defined, since the Measuring Date, as hereinafter defined. The "Exchange rate for settlement of obligations denominated in foreign currency payable in the Mexican Republic" (*Tipo de cambio para solventar obligactones denominadas en moneda extranjera pagaderas en la republica mexicana*), as published by Banco de Mexico, is referred to herein as the "Exchange Rate."

The Measuring Date to be used on the first Calculation Date is the date on which this Agreement was executed, at which time the Exchange Rate used by Offshore in establishing the Shelter Plan Fee for the first contract year was 10.1 Mexican Pesos to the US Dollar. On each subsequent Calculation Date, the Measuring Date will be the immediately preceding Calculation Date, and the Exchange Rate (the "Starting Exchange Rate") against which the Percent of Change in Exchange Rate is to be calculated will be the Ending Exchange Rate, as hereinafter defined, that was used in establishing the Shelter Plan Fee for the current contract year.

The Percentage Change in the Exchange Rate will be determined by calculating the percentage change between the Starting Exchange Rate and the Ending Exchange Rate, which is defined to be the result of dividing (1) the sum of the average exchange rates for all months since the applicable Measuring Date, by (2) the number of months between the Measuring Date and the Calculation Date.

Both the Mexican Price Index and the Exchange Rate are published by the Banco de Mexico at www.banxico.org.mx, and in the *Diario Oficial de la Federacion*, which is available at the following commercial web site: www.cpware.com.

3. Change in US CPI The parties agree that the Change in the US CPI will be measured over the twelve (12) month period preceding the Calculation Date.

V. EXAMPLE



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1. Assume:

The Percent of Change in Mexican CPI = 10%
The Percent of Change in Exchange Rate = 8%
The Change in US CPI = 3%
Prior Year's Shelter Plan Fee = \$1.00

2. Then:

$A = (1 + [10/100]) = 1.10$
 $B = (1 + [08/100]) = 1.08$

3. Percentage Adjustment for Mexican Economic Changes:

$((1.10/1.08) - 1) \times 100 = 1.85\%$

4. Application of Percentage Adjustment for Mexican Economic Changes to Shelter Plan Fee:

1.85% of (70% of Shelter Plan Fee) = 1.3% (rounded from 1.295% to the nearest hundredth)

5. Application of Percentage Adjustment for US Economic Changes to Shelter Plan Fee

3% of (30% of Shelter Plan Fee) = 0.9%

6. Amount of Adjustment (increase or decrease) of Shelter Plan Fee for the next contract year will be the sum of (i) the result of applying item 4 to the current Shelter Plan Fee, plus (ii) the result of applying item 5 to the current Shelter Plan Fee, plus (iii) the current Shelter Plan Fee.

- (i) $(\$1.00 \times 1.3\% = \$0.013)$, plus
- (ii) $(\$1.00 \times 0.9\% = \$0.009)$,
- (iii) The sum of (i) and (ii) is \$0.022, plus
- (iv) \$1.00, the Shelter Plan Fee for the current contract year, results in
\$1.02 (rounded from \$1.022 to the nearest hundredth)
as the Shelter Plan Fee for following contract year.



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Exhibit A—Shelter Plan Service Agreement

**BUILDING #7, (Plant 8) SPECIFICATIONS
BELLA VISTA INDUSTRIAL PARK, EMPALME, SONORA**

- **TOTAL BUILDING AREA** 54,185.64 Sq. Ft
- **BUILDING HEIGHT**
Minimum height 23.6 Ft.
Maximum height 34.5 Ft.
- **PRODUCTION AREA**
Total area 49,065.24 Sq. Ft.
- **FLOOR**
6" Concrete floor sealed with polyurethane
- **EXTERIOR WALLS**
Cement block, painted or insulated
- **ROOF**
Metal structure with 3" Polyurethane insulation
- **BATHROOMS**
Total area 1,024.78 Sq. Ft.
Women's bathroom: 12 washbasins and 8 Toilets
Men's bathroom: 2 washbasins, 3 urinals and 3 Toilets
- **OFFICES**
Total area 1,398.80 Sq. Ft.
Includes ceramic tile floor, drop ceiling.
- **OFFICES FOR MTK Personnel**
Total area 271.52 Sq. Ft.
Includes ceramic tile floor, drop ceiling.
- **CAFETERIA**
Total area 1,350.27 Sq. Ft.
Includes ceramic tile floor, open ceiling, cabinets with formaica top and electrical outlets thru the area.
- **CLIMATE CONTROL**
Production/Office area: 160.0 Tons of Air Conditioning
Office MTK personnel area: 1.5 Tons HVAC

Exhibit A—Shelter Plan Service Agreement

- **BUILDING ACCESS**

- Side

- Three 8'x 10' Roll up curtains for docks
 - Three Employee emergency doors

- **CHEMICAL STORAGE ROOM**

- Total Area 248.77 Sq. Ft (Two rooms)

- **LIGHTING**

- Production Area, Fluorescent light fixture with 75 W, providing approximately 50 feet candles of light, 382 pieces

- **WATER LINE**

- 2" Diameter .

- **DOCKS**

- Total Area 826.26 Sq. Ft

- **TOTAL BUILDING AREA:**

PRODUCTION AREA	49,065.24 Sq. Ft.
BATHROOMS - PRODUCTION AREA	1,024.78 Sq. Ft.
CAFETERIA	1,350.27 Sq. Ft.
CHEMICAL ROOM	248.77 Sq. Ft.
OFFICE	1,398.80 Sq.Ft.
OFFICE FOR PERSONAL MTK	271.52 Sq.Ft.
DOCKS	826.26 Sq.Ft.

TOTAL BUILDING AREA	54,185.64 Sq. Ft.
----------------------------	--------------------------

Exhibit A—Shelter Plan Service Agreement

**BUILDING #4, (Plant 8) SPECIFICATIONS
BELLA VISTA INDUSTRIAL PARK, EMPALME, SONORA**

- **TOTAL BUILDING AREA** 55,586.46 Sq. Ft
- **BUILDING HEIGHT**
Minimum height 23.6 Ft.
Maximum height 34.5 Ft.
- **PRODUCTION AREA**
Total area 42,988.25 Sq. Ft.
- **FLOOR**
6" Concrete floor sealed with polyurethane
- **EXTERIOR WALLS**
Cement block, painted or insulated
- **ROOF**
Metal structure with 1" Polyurethane insulation
- **BATHROOMS**
Total area 1,984.04 Sq. Ft.
Women's bathroom: 24 washbasins and 16 Toilets
Men's bathroom: 6 washbasins, 6 urinals and 4
- **OFFICES**
Total area 7,905.26 Sq. Ft.
Includes ceramic tile floor, drop ceiling.
- **CLIMATE CONTROL**
Production area: 195.0 Tons of Air Conditioning
Office area: 14.0 Tons of Air Conditioning
- **BUILDING ACCESS**
Front
One Employee entrance
Two main entrances
Four 8'x 10' Roll up curtains for docks
Side
One Employee emergency doors

Exhibit A—Shelter Plan Service Agreement

- **COMPRESSOR ROOM**
Total Area 605.65 Sq. Ft (One room)
- **ELECTRICAL POWER**
500 KVA 440/254 Volt transformer
Power delivered to the main panel (800 AMP main breaker)
500 KVA 220/127 Volt Transformer
Power delivered to the main panel (1,600 AMP main breaker)
150 KVA 440/254 Volt transformer
Power delivered to the main panel (250 AMP main breaker)
- **LIGHTING**
Production Area, Fluorescent light fixture with 75 W, providing approximately
50 feet candles of light, 374 pieces
- **WATER LINE**
2" Diameter .
- **PORCH**
Total Area 1,043.94 Sq. Ft
- **DOCKS**
Total Area 1,059.32 Sq. Ft
- **TOTAL BUILDING AREA:**

PRODUCTION AREA	42,988.25 Sq. Ft.
BATHROOMS – PRODUCTION AREA	1,984.04 Sq. Ft.
OFFICES	7,905.26 Sq. Ft.
COMPRESSOR ROOM	605.65 Sq. Ft.
DOCKS	1,059.32 Sq. Ft.
PORCH	1,043.94 Sq. Ft.
TOTAL BUILDING AREA	55,586.46 Sq. Ft.

Exhibit A—Shelter Plan Service Agreement

**BUILDINGS 20, 21 & 22 (Plant 4) SPECIFICATIONS
BELLA VISTA INDUSTRIAL PARK, EMPALME, SONORA**

- **TOTAL RENTABLE AREA** 103,656.66 Sq. Ft.
- **BUILDING HEIGHT**
Minimum height 23.60 Ft.
Maximum height 34.50 Ft.
- **PRODUCTION AREA (Including loading docks)**
Irregular total area 82,472.90 Sq. Ft.
- **Docks**
Total Area 2,862.99 Sq.Ft.
- **FLOOR**
6" Concrete floor scaled with polyurethane
- **EXTERIOR WALLS**
Cement block, painted or insulated
- **ROOF**
Metal structure with 1" Polyurethane insulation
- **BATHROOMS IN PRODUCTION AREA**
Total area 2,068.93 Sq. Ft.
Women's bathroom: 8 washbasins , 16 Toilets
Men's bathroom: 12 washbasins, 12 urinals , 10 Toilets
- **OFFICES**
Total area 12,849.83 Sq. Ft.
Includes ceramic tile floor, drop ceiling, coffee station and recessed lighting.
Bathrooms area with drop ceiling.
Women's bathroom: 8 washbasins , 6 Toilets
Men's bathroom: 4 washbasins, 4 urinals , 2 Toilets
- **OFFICES FOR MTK.**
One Additional Offices for Maquilas Coordinator. (145.37 Sq. Ft.), with drop ceiling and tile floor in the office for Maquilas coordinator.
- **CAFETERIA AREA**
Total area 1,371.90 Sq. Ft.
Area defined, partitioned open area , concrete floor, counter and electrical outlets
- **CLIMATE CONTROL**
Production area: 320 Tons of HVAC
Office area: 50 Tons HVAC

Exhibit A—Shelter Plan Service Agreement

- **BUILDING ACCESS**

- **Rear**

- Six 8'x 10' Roll up curtains (doors) for docks

- Three 10' X 12 Ground Level with one Doors for Emergency exit, each.

- One door for access for compressor room.

- **Front**

- One Main Entrance door

- Three Emergency exit

- **Side**

- One Emergency exit.

- One Main entrance.

- **CHEMICAL STORAGE ROOM**

- Total Area 301.06 (Two rooms)

- **COMPRESSOR ROOM**

- Total Area 547.89Sq.Ft., related equipment

- 50 AMP service provided

- **ELECTRICAL POWER**

- 500 KVA 220/127 volt transformer

- Power delivered to the main panel (1600 AMP main breaker)

- 500 KVA 440/254 volt transformer

- Power delivered to the main panel (800 AMP main breaker)

- 500 KVA 440/254 volt transformer

- Power delivered to the main panel (800 AMP main breaker)

- **LIGHTING**

- Production Area, electronic fluorescent 4x32 w providing approximately 50 feet candles of light, 546 pieces

- **TELEPHONE**

- 1 Phone line Telmex exclusive carrier for the park

- **WATER LINE**

- 2" Diameter

- **PORCH**

- Total Area 833.90 Sq.Ft.

Exhibit A—Shelter Plan Service Agreement

• <u>TOTAL BUILDING RENTABLE AREA:</u>	
PRODUCTION AREA	82,472.90 Sq.Ft.
DOCKS	2,862.99 Sq.Ft.
BATHROOMS – PRODUCTION AREA	2,068.93 Sq.Ft.
OFFICE AREA	12,849.83 Sq.Ft.
CHEMICAL ROOM	301.06 Sq.Ft.
COMPRESSOR ROOM	547.06 Sq.Ft.
CAFETERIA	1,371.90 Sq.Ft.
PERSONAL OFFICE MTK	145.37 Sq.Ft.
PORCH	833.90 Sq.Ft.
OSMOSIS ROOM	202.72 Sq.Ft.
 TOTAL RENTABLE AREA	 103,656.66 Sq.Ft.

EXHIBIT B, SHELTER PLAN AGREEMENT-DELPHI

Weekly payroll

OFFSHORE INTERNATIONAL INC
WAGE & FRINGE CALCULATION EXAMPLE

Reference	Min. Wage, Mexico City (SMDF)
Day	\$42.15
Year	\$15,384.75
3 x SMDF/Yr.	\$46,154.25
Min. Wage, Empalme	\$40.10

Definition	
RATE OF EXCHANGE	\$10.200
DAILY SALARY	\$77.00
Working Days:	293.00
Paid Sundays:	52.00
Paid Holidays:	7.00
Paid Vacations:	13.00
Paid Vacation Bonus:	30.00%
Paid Christmas Bonus:	16.00
Paid Profit Sharing:	9.00
Total Gross Salary	\$30,330.30

Note: By law, Mexico wages are based on a 365 day assumption; therefore wages are quoted based on all days of the year
Note: all amounts in column B in this section are days, except for vacation bonus
Note: Number of days worked = 365-52 (Sundays)-7 (holidays)-13 (vacations)
Mexico pays on a 7 day basis, therefore Sundays, holidays and vacation days are included in the calculation
Number of holidays-annual
Number of vacation days-annual
Mexico requires a vacation bonus based on a percentage of vacation earned (union agreement modifies percentage)
Required by law, based on days of pay; union agreement modifies this number; 30 days for salaried employees
Required by union agreement; union agreement modifies number

Taxes:	%	
Social Security Taxes		
Tax Based on SMDF	16.8000	\$2,338.45
Sick Leave	0.7000	\$212.31
Life and Disability Insurance	1.7500	\$300.78
Medical Insurance For Retirees	3.1500	\$955.40
Accident Leave Factor	3.20180	\$1,001.45
Day Care	1.0000	\$303.30
Minimum Wage Additional Tax	0.0000	\$0.00
Other benefits for Retirees	1.0500	\$318.47
Additional Tax on Salaries over 3 times SMDF	4.0400	\$0.00
Other Taxes:		
Housing (INFONAVIT)	5.00	\$1,516.52
Retiro	2.00	\$606.61
State (2.5%) + 3% salary credit tax	2.50	\$758.26
3% salary credit tax	3.00	\$909.91
Personal Cost	1.00	\$303.30
		\$40,285.09

Note: all amounts in column B in this section are percentages
Basic social security tax, capped by Mexico City minimum wage
This and percentages below are in addition to basic social security rate
Housing tax required by law
Retirement fund--required by law
State tax (Sonora)
New 3% salary credit tax, implemented January, 2002; required by law
Additional amount applicable to lower-level wages only
Additional tax on salaries higher than 3 times the Mex. City minimum wage
to recover absenteeism, and employee benefit costs not otherwise charged
total annual cost in pesos

Pay Cost per hour, based on working days x 8 (hours/day)
US dollar cost per hour, based on working days x 8 (hours/day)
Note: 8 hours is assumed since normal work week is 6 days @ 8 hrs/day, even though actual schedule may be 5 days @ 8.6 hrs/day

NOTE:
Social Security Taxes use the Mexico city daily minimum Wage (SMDF) as the basis for calculation.
Wage Increases during the year impact the cost of vacation, vacation bonus and Christmas bonus.
Tax rates, benefit allowances are subject to change
Revised December, 2002



THE OFFSHORE GROUP

November 23, 2004

Mr. Bjoern Goeke
Supply Manager, Indirect and ME
Delphi Mexico Operations
Mexico Technical Center
48 Walter Jones Blvd., Mail Station 30B-310
El Paso, TX 79906

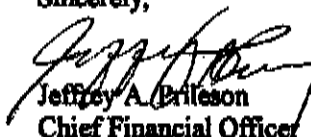
Dear Bjoern:

I am writing to acknowledge receipt of your letter dated November 15, 2004 in which Delphi requested a one-year renewal of its Shelter Plan Service Agreement ("Agreement") with Offshore, in lieu of the five-year agreement we had been discussing.

By this letter, Offshore confirms Delphi's request for a one year renewal of the current Agreement, from December 9, 2004 through December 8, 2005.

We appreciate this opportunity to continue our relationship, and look forward to new discussions in 2005 regarding future growth opportunities together.

Sincerely,


Jeffrey A. Drilesen
Chief Financial Officer

Copy: C. Espriu; L.F. Seldner

777 E. MacArthur Circle, Suite 1
Tucson, AZ USA 85714
offshoregroup.com

Offshore International Inc.
Offshore International LLC

Tel: 520.889.0022
Fax: 520.573.9316

August 4, 2005

Mr. Luis F. Seldner
President
Offshore International, INC.
777 East MacArthur Circle, Suite 1
Tucson, AZ 85714

Dear Luis Felipe,

This letter is to notify Offshore of Delphi's decision to renew the contract for the Shelter Plan Service Agreement between Delphi Automotive Systems LLC and Offshore International Inc. dated December 9th, 2002 for buildings 20, 21, and 22, also known as plant 4, through ~~September 8th~~ ^{out December 8th}, 2006 under the same terms and conditions of the agreement currently in force. It is also Delphi's desire not to include buildings 4 and 7, also known as plant 8 in the renewal.

This letter shall constitute an amendment to the Shelter Agreement pursuant to the terms above and we therefore ask you to sign your consent below on behalf of Offshore.

I am sending you two originals of this letter. Please sign and return one of them by DHL no later than August 15th, 2005.

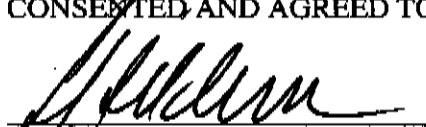
I look forward the opportunity of continuing our relationship

Sincerely,



Gabriel E. Llaús
Manager, Delphi Global Supply Management

CONSENTED AND AGREED TO:



Mr. Luis F. Seldner
President
Offshore International, INC.

cc: Sean Kelly, Ubaldo de La Hoya, Raúl Cuéllar, Noel Villalobos, Sara Romero, Al Armendariz, Jose Luis Armendariz, Luis Carlos Martínez Pérez, Rubén Lizárraga

Offshore International, Inc.
Delphi pre-petition accounts receivable
For costs and fees incurred prior to October 8, 2005

Date	Invoice	Amount	Comments
9/28/2005	DPH-149D	\$ 2,576.09	Client Purchases
10/5/2005	DPH-150D	\$ 43,669.22	This Invoice includes rent for October (to Oct 7th) plus pre-petition purchases
10/5/2005	DPH-150L	236178.59 Labor/Shelter Fee	
		-15064.79 Payment received 10/05/05	
		-39363.52 Payment received 10/19/05	
		\$ 181,750.28 Balance Due	
10/12/2005	DPH-151D	\$ (25,443.57)	Credit balance - Paid Transportation twice
11/2/2005	SP-DPH-008	\$ 6,780.31	Customs Broker pre-petition
	Subtotal	\$ 209,332.33	
11/16/2005	June IVA SP-DPH-009	\$ (71,955.14)	VAT refund June 2005
11/2/2005	July IVA SP-DPH-007	\$ (52,484.62)	VAT refund July 2005
1/4/2006	Aug IVA SP-DPH-010	\$ (51,110.25)	VAT refund August 2005
3/15/2006	Sept IVA SP-DPH-012	\$ (51,455.29)	VAT refund September 2005
	Subtotal	\$ (227,005.30)	
	NET BALANCE with VAT	\$ (17,672.97)	